



State of Washington

Department of Fish and Wildlife

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December 13, 2006

Derek Sandison
Department of Ecology
15 West Yakima Ave., Suite 200
Yakima, Washington 98902-3452

RE: Consultation Regarding the Draft Voluntary Regional Agreement between Columbia-Snake River Irrigators Association and Ecology

Dear Mr. Sandison,

Washington Department of Fish and Wildlife (WDFW) appreciates the opportunity to comment on this first Voluntary Regional Agreement (VRA) being considered as part of the Columbia River Water Management Program (CRWMP, or Program). Agency staff members have taken the opportunity throughout November and early December to meet with Ecology staff and others to discuss the content and effects of the VRA.

WDFW participation in this Program, and specifically this VRA consultation, continues to be focused on assuring that implementation of the Program as a whole is appropriately based on balancing water for instream and out-of-stream uses. It is clear to us that, notwithstanding provisions of RCW 90-90-030, water rights applications under the VRA cannot be viewed as having separate standards from the CRWMP as a whole, and must rely on other Program features to provide year-round mitigation for any new water rights issued.

Following are discussions of WDFW's key concerns relative to the VRA, followed by recommendations for improvement of the VRA or for its implementation within the CRWMP. WDFW extends cautious support for the VRA, as amended per recommendations, assuming that the greater picture of CRWMP appropriately achieves a balance of water for people with water for fish.

Mitigation policy

WDFW's key concern with the CRWMP and VRAs is to ensure they are implemented in a manner reflecting the intent of E2SHB 2860; that being a balance of water for instream and out-of-stream uses. Under a VRA, the statute indicates that, for water rights issued from the Columbia River mainstem, there be no negative impact on Columbia River mainstem instream flows in the months of July and August (and the Snake River mainstem during April through August). But new permits have potential to impair water for fish, as well as senior water rights, during the so-called "non-critical" months of September through June, especially when river flows are below average.

WDFW is committed to achieving no loss and long-term net gain of habitat functions and values in the programs we initiate, regulate, or review¹. In the vernacular of the CRWMP, this means "no negative impact on instream flows." This VRA clearly addresses the "water for people" side of the equation, while offering protection for status quo instream flows during July and August. This meets WDFW minimum goals for about half of the irrigation volume, leaving the other half – the September-to-June period – to be compensated within the CRWMP outside of the VRA structure.

July and August are the most immediate concern for impacts to fish flows primarily because these are the months with the highest withdrawals², however it is risky to assume that additional withdrawals in other months come without impact to streamflows critical to fish. NRC implies that risk potential is linked with the proportion of river flow that is diverted in any given month. In their 2004 report, NRC demonstrates that the proportion diverted in July becomes extreme, over 21% of river flow, when additional water withdrawals are coincident with low flow conditions:

"... the effects of prospective additional withdrawals in July (234,000 acrefeet) could be substantial. July is a period of high demand for Columbia River water. The upper end of the range of the prospective additional withdrawals considered in this study would increase July withdrawals from their current value of roughly 6.8 percent of mean Columbia River flows to roughly 8.6 percent of mean Columbia River flows. Under minimum July flow conditions, the effects would be greater: the upper end of the proposed range of diversions would increase current July withdrawals from roughly 16.6 percent to roughly 21 percent of Columbia River minimum flows."³

¹ WDFW policy POL-M5002: *Requiring or Recommending Mitigation*.

² National Research Council Committee on Water Resources Management, Instream Flows, and Salmon Survival in the Columbia River Basin. 2004. *Managing the Columbia River: Instream Flows, Water Withdrawals, and Salmon Survival*. National Academies Press. Chapter 3, page 38, paragraph 1.

³ Ibid. Chapter 8, page 129, 2nd paragraph.

Table 3.1⁴ of the report, excerpted below, shows that proportions currently withdrawn in other months are also high under low flow conditions – well above the 6.8% currently diverted in June during an average year.

TABLE 3.1 Columbia River Flows at John Day Dam, 1960-1999 and monthly Columbia River Withdrawals

Month	(4) Withdraw als	(5) percent of max.	(6) percent of average	(7) percent of min.
Jan	10.8	0.1	0.1	0.2
Feb	10.0	0.1	0.1	0.2
Mch	110	0.5	1.0	1.8
April	597	3.0	4.9	10.1
May	765	2.6	4.5	9.4
June	792	2.3	4.2	11.1
July	850	4.0	6.8	16.6
Aug	793	5.9	9.5	14.6
Sep	498	5.4	7.8	11.6
Oct	274	2.6	4.0	5.1
Nov	12.3	0.1	0.2	0.2
Dec	11.7	0.1	0.1	0.2

Notes:

Column 4—Permitted volumes from mainstem Columbia River surface water withdrawals and groundwater from within one mile of the river, between the Canada-U.S. border and Bonneville Dam. Values in thousands of acre-feet/month.

Columns 5-7—Withdrawals as percentages of monthly Columbia River discharge values at John Day Dam.

SOURCE: USGS, 1996; Washington Department of Ecology, 2003.

National Marine Fisheries Service, in its Federal Columbia River Power System BiOp, issued seasonal flow objectives and planning dates for the mainstem Columbia and Snake Rivers that range from April through August⁵ because these are the months when natural flushing flows for juvenile migrants have been flattened through hydro system control. Ecology's own rules on Columbia River mainstem flow provide minimum flows at discrete locations for every month of

⁴ Ibid. Chapter 3, page 34.

⁵ National Marine Fisheries Service. December 21, 2000. *2000 FCRPS BIOLOGICAL OPINION*. Page 9-56; U.S. Army Corps of Engineers, Bureau of Reclamation, and Bonneville Power Administration.. November 24, 2004. *Final Updated Proposed Action for the FCRPS Biological Opinion Remand*. Page 48; Technical Management Team. *2006 Water Management Plan*. Final May 17, 2006

the year⁶. Finally, scientific assessments have concluded that climate change will bring about increased air and water temperatures, as well as a shift in winter precipitation type from snow to rain. Until effects of climate change on distribution of flows throughout the year can be predicted, a precautionary approach to additional stream flow reduction would seem advisable.

In light of these considerations, WDFW recommends that Ecology identify how the CRMWP as a whole will fill in the “water for fish” side of the water rights equation.

Recommendation 1: The CRWMP, as a whole, should ensure no net loss to river flows in any month through the issuance of new water rights permits; specifically, through issuance of new permits under this VRA.

The Columbia River Water Development statute indicates that “conservation” funds from the Columbia River Basin Water Supply Development Account can be used to “*improve or alter operations of existing storage facilities, implement conservation projects, or any other actions designed to provide access to new water supplies within the Columbia River basin for both instream and out-of-stream uses.*”⁷ The statute directs Ecology to acquire water for both instream and out-of-stream uses, and “conservation funds” provide the means with which to implement those goals.

Recommendation 2: Dedicate so-called “Conservation” funds to ensure no net loss to instream flows in any month through the issuance of new water rights permits.

Conversion of interruptible rights

Instream uses will be put at further risk if interruptible water rights issued after the 1980 instream flow rule become no longer interruptible. NRC recommended against conversion of interruptible rights⁸:

“Conversion of interruptible water rights to uninterruptible status makes an adaptive response for the benefit of salmon more difficult. Interruptible water rights are interruptible so that at times of scarcity, instream flows can be protected. Making any out-of-stream right uninterruptible reduces flexibility to retain water in the river when salmon need it most—during low-flow periods.

The conversion of water rights to uninterruptible status will decrease flexibility of the system during critical periods of low flows and comparatively high water temperatures. Conversions to uninterruptible rights during these critical periods are not recommended.” [emphasis in original]

⁶ Washington Administrative Code 173-563-010 through 900.

⁷ 90.90.010(2)

⁸ National Research Council Committee on Water Resources. Management, Instream Flows, and Salmon Survival in the Columbia River Basin. 2004. Managing the Columbia River: Instream Flows, Water Withdrawals, and Salmon Survival. National Academies Press. Page 131, paragraphs 2 and 4.

However, Columbia River Water statute directs Ecology to prioritize conversion of interruptible rights to un-interruptible, and indicates that new water supplies should be developed to offset this conversion.⁹ WDFW recognizes the necessity for this action, however conversion of interruptibles under the VRA must abide by provisions of the CRWMP.

Recommendation 3: In order to protect instream flows during low flow years, Ecology must find alternative water sources to offset conversion of interruptible rights, and/or develop a comprehensive drought management program that provides management flexibility to protect stream flows in drought years.

VRA needs additional detail

With respect to the VRA before us, there is a disappointing lack of specificity on which to base comments. This is especially troubling considering that, per 90.90.030(4)(a), no additional consultations will be required for issuance of new water rights under this VRA. WDFW expected to see enough detail to ascertain the geographic range of projects under the VRA; the tributaries involved, if any; the total quantity of water likely to be involved; and to what use types this new water is being directed. Without this key information, WDFW is unable to assess potential costs and benefits to fish and wildlife from water right permit applications approved under this agreement.

Recommendation 4: Include within the VRA specific information defining the scope of this VRA, as follows:

- 1. Geographic boundaries under consideration;**
- 2. Number of applications and total quantity of water being requested;**
- 3. Use types and locations;**
- 4. Identify who qualifies (or how to qualify) for coverage under this VRA;**
- 5. Specify ending date, at which time the program could be renewed or terminated.**

VRA needs adaptive management and monitoring information:

In reviewing the initial CRI Program, the NRC suggested re-evaluation of program components periodically:

“The idea of re-evaluating the scenarios periodically is excellent. However, for this re-evaluation to be meaningful, the program needs to be designed so that

⁹ RCW 90.90.020(3)(c)

*any aspect of it could be undone (reversed) if the evaluation calls for such a reversal. ... In some cases, more frequent re-evaluations might be necessary.*¹⁰

Under 90.90.030(9) RCW, Ecology is required to "... monitor and evaluate the water allocated to instream and out-of-stream uses under this section, evaluate the program, and provide an interim report to the appropriate committees of the legislature...."

Recommendation 5: Within this VRA, specify the accountability mechanisms Ecology will employ to monitor and enforce provisions of the agreement. Provisions to be monitored include payments, water use, and BMP implementation. In addition, the VRA must include provision for adaptive management, including reviews in 2008, 2011, and every 5 years thereafter, and mechanisms for changing provisions based on new scientific, social or economic information.

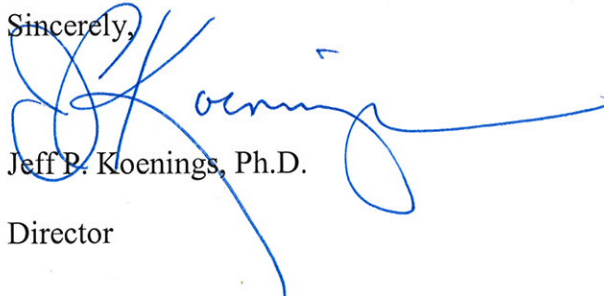
BMPs must be cite-able

By acknowledging that BMPs contribute to water conservation that provides "new" water, Ecology is adopting them in some official capacity. Either the BMPs must be listed as conditions for every permit issued, or they must be otherwise identifiable as expressions of state policy.

Recommendation 6: Specifically cite the BMPs on which much of the substance of this program is based, including BMPs for all anticipated water use types; ensure they are clearly labeled as government-endorsed and "official".

I believe the CRWMP can, and will, provide instream benefits in balance with out of stream benefits. I look forward to further discussions identifying locations and times in which fish, wildlife, and their habitats are most vulnerable to ensure the Program avoids or mitigates impacts to those locations/times. Thank you for the opportunity to comment.

Sincerely,



Jeff P. Koenings, Ph.D.

Director

¹⁰

National Research Council Committee on Water Resources Management, Instream Flows, and Salmon Survival in the Columbia River Basin. 2004. *Managing the Columbia River: Instream Flows, Water Withdrawals, and Salmon Survival*. National Academies Press. . Chapter 7, page 125, paragraph 4.